IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1473 OF 2007
IN
SUIT NO.704 OF 1993

Mrs.Shanti Gopalkrishnan ..Plaintiff

V/s.

Mrs.Vasanta Kumaran & ors ..Defendants

Mr.M.S.Bhandari i/b. Mr.R.R.Mishra for plaintiff

CORAM : A.M.KHANWILKAR, J.

DATE : 21ST SEPTEMBER, 2007

P.C.

1. Heard counsel for plaintiff. None appears for the defendants though, served. No reply has been filed to oppose this Chamber Summons.

2. A short question involved in the present Chamber Summons is about the correctness of the view taken by the Commissioner in his order dated 16th August, 2007. The plaintiff had moved an application dated 30th July, 2007. He prayed that the Court for taking accounts to hold that signatures of defendant Nos.1 and/or her

constituted attorney (her husband) on the documents filed by the plaintiff, be deemed to be admitted/stand admitted. It is seen that plaintiff had given notice to defendant No.1 to admit that position. Indeed, defendant No.1 sent reply to the said advocate's notice, but there is no express denial about the assertion of the plaintiff that the signatures on the documents in question were of defendant No.1 and/or her constituted attorney. If this is so, then the plaintiff had rightly invoked provision under Order 12 Rule 2A of the Civil Procedure Code. The Commissioner however, has proceeded on an erroneous assumption that since recording of evidence of the defendants has commenced, the question of entertaining the request will not arise. This is a manifest error committed by the Commissioner. In the circumstances, Chamber Summons ought to succeed. Same deserves to be made absolute in terms of prayer clause (a) with no order as to costs. Ordered accordingly.

(**A.M.KHANWILKAR, J.**)